

February 27, 2008

JF

Dear Clerk,

C08 01528

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I am a prisoner against my wife, <sup>RICHARD WIEBER</sup> ~~was at the~~  
San Quentin State Prison, and wish to file the  
enclosed 42 U.S.C. §1983, as instructed by  
Judge Jeremy Fogel (see herein). Please find  
the original copy herein with a extra copy to  
be stamped "Filed" and returned in the  
provided S.A.S.E. Enclosed you will also  
find a motion & declaration for appointment  
of counsel, and application to proceed In  
Forma Paupris.

Thank you!

Respectfully,

Lynne R. Braswell

P.S. Dear Clerk, please be advised that I have been  
ready to file this petition since 02-07-08. However, numerous  
requests to my counselor, as procedure here, for the signing  
of the Proof of Indigency with attached 6 month account  
history have all gone unanswered for over a month  
now. I even filed a inmate appeal that has gone

OVER →

unanswered as well. I don't know what else I  
can do, but this portion needs to be filed. Maybe  
the Court can issue a order for San Quentin prison,  
my counselor, Counselor Mincey, CCI, to produce this  
needed material now? Please advise.

Thank you.

Respectfully,

Spencer R. Braswell

March 13, 2008

**FILED**

FEB 14 2007

RICHARD W. WICKING,  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SPENCER RAWLINS BRASURE, } No. C 06-5823 JF (PR)  
Petitioner, } JUDGMENT  
vs.  
ROBERT AYERS, Warden, et al., }  
Respondents.

The Court has dismissed this petition for a writ of habeas corpus without prejudice because Petitioner's challenges to the conditions of his confinement should be brought in a civil rights complaint pursuant to 42 U.S.C. § 1983. Accordingly, a judgment of dismissal without prejudice is entered. The Clerk shall close the file.

IT IS SO ORDERED.

DATED: 2-14-90 F

  
JEREMY FOGEL  
United States District Judge

1 A copy of this ruling was mailed to the following:

2 Spencer Rawlins Brasure  
3 P-10000  
4 San Quentin State Prison -Death Row  
5 San Quentin, CA 94974

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\*\*Original filed 2/14/07\*\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SPENCER RAWLINS BRASURE,  
Petitioner,  
vs.  
ROBERT AYERS, Warden, et al.,  
Respondents.  
No. C 06-5823 JF (PR)  
ORDER OF DISMISSAL;  
DENYING PETITIONER'S  
MOTIONS AS MOOT; NO  
FILING FEE IS DUE  
(Docket Nos. 2, 3)

Petitioner, a state prisoner proceeding pro se, filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner's claim concerns the conditions of his confinement at San Quentin State Prison. Petitioner challenges the prison's collection of court-ordered restitution while his Ventura Superior Court criminal judgment and conviction is on appeal. Petitioner has filed a grievance through the prison administrative appeal process and exhausted his claim in state court.

24 The Supreme Court has declined to address whether a challenge to a condition of  
25 confinement may be brought under habeas. See Bell v. Wolfish, 441 U.S. 520, 526 n.6  
26 (1979); Fierro v. Gomez, 77 F.3d 301, 304 n.2 (9th Cir.), vacated on other grounds, 519  
27 U.S. 918 (1996). However, the Ninth Circuit has held that “habeas jurisdiction is absent,

1 and a § 1983 action proper, where a successful challenge to a prison condition will not  
 2 necessarily shorten the prisoner's sentence." Ramirez v. Galaza, 334 F.3d 850, 859 (9th  
 3 Cir. 2003) (implying that claim, which if successful would "necessarily" or "likely"  
 4 accelerate the prisoner's release on parole, must be brought in a habeas petition). The  
 5 preferred practice in the Ninth Circuit has been that challenges to conditions of  
 6 confinement should be brought in a civil rights complaint. See Badea v. Cox, 931 F.2d  
 7 573, 574 (9th Cir. 1991) (civil rights action is proper method of challenging conditions of  
 8 confinement); Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming  
 9 dismissal of habeas petition on basis that challenges to terms and conditions of  
 10 confinement must be brought in civil rights complaint).

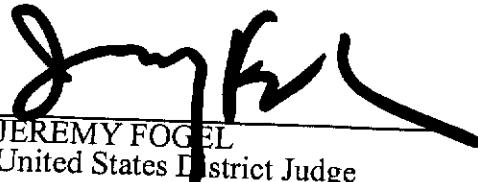
11 Accordingly, the Court dismisses this habeas action because Petitioner's claim  
 12 concerning the collection of his restitution order does not challenge the duration of his  
 13 conviction or sentence. Petitioner's claims are more appropriately addressed in a civil  
 14 rights complaint pursuant to 42 U.S.C. §1983.

15 **CONCLUSION**

16 The petition for writ of habeas corpus is DISMISSED without prejudice.  
 17 Petitioner's motion to proceed in forma pauperis and motion for appointment of counsel  
 18 (docket nos. 2, 3) are DENIED as moot. No filing fee is due. Petitioner may re-file his  
 19 claims in a new action under a civil rights complaint pursuant to 42 U.S.C. §1983 on the  
 20 enclosed form. Petitioner shall include any supporting documentation with his new  
 21 complaint, as the instant case will be closed. The Clerk shall terminate all pending  
 22 motions and close the file.

23 IT IS SO ORDERED.

24 DATED: 2/14/07



25 JEREMY FOGEL  
 26 United States District Judge  
 27  
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1 A copy of this ruling was mailed to the following:

2 Spencer Rawlins Brasure  
3 P-10000  
4 San Quentin State Prison -Death Row  
5 San Quentin, CA 94974

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